

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DAVID RAMOS,

Plaintiff,

v.

ATTORNEY DAVID L.
MISTACHKIN,

Defendant.

Case No. C07-5197 FDB

ORDER ADOPTING REPORT
AND RECOMMENDATION
DISMISSING ACTION


The Magistrate Judge recommends that this civil rights complaint be dismissed prior to service for failure to state a claim. Plaintiff is challenging the actions of his assigned counsel in a criminal proceeding. As detailed by the Magistrate Judge, Plaintiff's claim for relief necessarily implies the invalidity of a criminal judgment and must be brought as a petition for a writ of habeas corpus, and not as a 42 U.S.C. § 1983 action. See, Butterfield v. Bail, 120 F.3d 1023 (9th Cir. 1997). Further, the conduct complained of was not committed by a person acting under color of state law and thus is not subject to a civil rights claim. Haygood v. Younger, 769 F.2d 1350, 1354 (9th Cir. 1985).

The Court, having reviewed Plaintiffs' complaint, the Report and Recommendation of Magistrate Judge J. Kelley Arnold,, and the remaining record, does hereby find and ORDER:

(1) The Court adopts the Report and Recommendation;

- 1 (2) This action is **DISMISSED** prior to service for failure to state a claim **This dismissal**
2 **is a strike pursuant to 28 U.S.C. 1915 (g).**
- 3 (3) Clerk is directed to send copies of this Order to plaintiff, counsel for any defendants
4 who have appeared, and to the Hon. J. Kelley Arnold.

5 DATED this 8th day of June, 2007.

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9 FRANKLIN D. BURGESS
10 UNITED STATES DISTRICT JUDGE
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